

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN**

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**MELISSA GRAY,  
Plaintiff,**

**v.**

**Case No. 08-CV-848**

**COMPREHENSIVE MANAGEMENT  
SERVICES and ABC INSURANCE  
COMPANY,  
Defendants.**

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**ORDER**

The plaintiff, Melissa Gray, filed her complaint in federal court on October 9, 2008. In a letter dated February 11, 2009, United States Magistrate Judge Goodstein informed the plaintiff that, pursuant to Fed. R. Civ. P. 4(m) and Civil L.R. 4.1, unless she submitted proof of service within 20 days of the date of the letter, her case would be dismissed. The twenty days passed and the plaintiff did not submit proof of service. Consequently, I dismissed the plaintiff's complaint and the case without prejudice on March 11, 2009. That same day, upon receiving notice of the dismissal, counsel for plaintiff, Thomas Kurzynski, contacted the court by phone, asserting that he had not received the February 11, 2009 warning and was not aware that the case was in danger of being dismissed. Further, Kurzynski stated that service on defendant Comprehensive Management Services was accomplished in October 2008, and Kurzynski believed that proof of service had already been filed with the court. Kurzynski also filed a motion to this effect, attaching proof of service to the motion.

Fed. R. Civ. P. 60(b)(1) allows a court on motion by a party to relieve that party from an order based on mistake, inadvertence, surprise or excusable neglect, if such a motion is filed within a reasonable time. Here, plaintiff mistakenly believed that proof of service, which was accomplished in a timely manner under Rule 4, was filed with the court, and did not receive

notice of the court's warning indicating otherwise. Given that service was timely under Rule 4(m), plaintiff inadvertently failed to file proof of that service, and plaintiff acted immediately upon learning of the mistake to remedy it by contacting the court and filing a motion for relief, I will grant plaintiff's motion.

**IT IS THEREFORE ORDERED** that plaintiff's motion to vacate the March 11, 2009 order is **GRANTED**.

Dated at Milwaukee, Wisconsin, this 30 day of April, 2009.

/s \_\_\_\_\_  
LYNN ADELMAN  
District Judge